



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dragon Services, Inc.

File: B-255354

Date: February 25, 1994

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Department of the Army, for the agency.
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the decision.

DIGEST

1. Contracting agency reasonably evaluated protester's performance risk as moderate based upon unfavorable information received concerning protester's performance under a similar contract, indicating performance problems significant enough to warrant such a rating, notwithstanding favorable information received concerning protester's performance under two other similar contracts.
2. Agency conducted adequate discussions with protester concerning performance risk-related issues where it led the firm to the major issues during discussions, and where any failure to conduct discussions as to the remaining issues was not prejudicial to protester.
3. Agency reasonably downgraded protester under managerial capability evaluation factor between the initial and the final evaluation from an outstanding rating to a very good rating where there were no documented advantages to support an outstanding rating; protester's mere disagreement with the agency's conclusion does not make it unreasonable.
4. Agency properly made award to the higher-priced offeror whose proposal was rated higher under past performance and rated essentially equal to that of the protester's under both the technical and managerial capability factors, where the tradeoff was reasonable and consistent with the solicitation's evaluation scheme.

DECISION

Dragon Services, Inc. protests the award of a contract to Industrial Maintenance Services, Inc. (IMS) under request for proposals (RFP) No. DAAH03-93-R-0057, issued by the Department of the Army for nutrition care services at Fox Army Hospital, Redstone Arsenal, Alabama. Dragon contends that the Army miscalculated its proposal under the performance risk evaluation factor, and failed to adequately discuss performance risk-related issues with the firm. Dragon also alleges that the Army improperly downgraded its proposal under the managerial capability factor between the initial evaluation and the final evaluation. Finally, Dragon alleges that the agency conducted an improper best value analysis of the proposals.

We deny the protest.

BACKGROUND

The solicitation, issued on April 27, 1993, as a small business set-aside, contemplated award of a fixed-price contract for a 1-year base period and 4 option years. The RFP sought a contractor to plan menus, prepare and serve meals, maintain the kitchen facilities, and perform related fiscal duties. The RFP stated that selection of an offeror for award would be based on an evaluation of proposals to determine the best value to the government. The evaluation was to consider the following four areas, listed in descending order of importance: technical capability, managerial capability, price, and performance risk.¹

The technical and managerial aspects of proposals were to be evaluated as outstanding, very good, good, and unacceptable. Performance risk was to be assessed by a performance risk assessment group (PRAG) as low, moderate, or high. Price was not to be scored, but was to be evaluated to determine the risk of performance with each offeror's proposed price.

The RFP stated that the agency would assess each offeror's performance risk based upon the offeror's record of past and current performance. The RFP further instructed that a significant achievement, problem, or lack of relevant data in any element of the work could become an important consideration in the evaluation process. Accordingly, offerors were required to submit a description of up to 3

¹Technical capability was the most important area and was twice as important as price; price was slightly less important than managerial capability, but twice as important as performance risk.

similar government and/or commercial contracts received or performed during the past 3 years. Offerors were advised that independent performance data might also be used to evaluate the offers. Specifically, the agency anticipated obtaining data with telephonic interviews and written questionnaires from government files and independent sources. The solicitation cautioned offerors that the agency did not assume the duty to search for data to cure problems it found in proposals, and that each offeror retained the burden of proving that its proposal was acceptable.

Five offerors, including Dragon, submitted proposals in response to the RFP. With respect to the past performance data, Dragon's proposal identified three food services contracts: two at the Fitzsimons Army Hospital in Aurora, Colorado--one from 1986 to 1990, and one from 1992 to the present--and a third at Fort Bragg, North Carolina, from 1989 to 1992. For each of these identified contracts, Dragon's proposal included a brief narrative description of the general scope of work required under the contract, as well as the firm's performance of those requirements.

For each contract identified by an offeror, the PRAG sent questionnaires to the contracting activity and conducted telephonic interviews with personnel familiar with the offeror's performance. With respect to Dragon, the first questionnaire response received from Fort Bragg described Dragon's performance in unfavorable terms. The respondent, the administrative contracting officer, expressed reservations about recommending future contract awards to Dragon. She stated that Dragon had been issued contract deficiency reports (CDR) and cure notices, and reported that Dragon was slow to respond to problem areas, sometimes not responding until the agency withheld payment. She also cited weaknesses in Dragon's quality control program, and asserted that Dragon appeared understaffed, and did not appear to utilize personnel sufficiently to meet the contract requirements.

The questionnaire response received from Fitzsimons described Dragon's performance of the most recent contract at that facility in generally favorable terms. The respondent, the contracting officer's representative (COR) for both of the Fitzsimons contracts, expressed no reservations about recommending future contract awards to Dragon. He stated that no major problems had occurred during performance, and that the overall quality of Dragon's team, performance, and management was good; however, he also stated that Dragon had no strong points. When asked if there were any particularly significant risks involved in the performance of the effort, the COR stated, "meeting the [accreditation] requirement of the Joint Commission for

Accreditation of Hospitals and other Organizations (JCAHO).¹ The CCR also cited Dragon's promoting of untrained or untested individuals as a weakness.

Based on these responses, the PRAG initially gave Dragon a moderate performance risk rating.² The full evaluation results were as follows:³

	<u>Dragon</u>	<u>IMS</u>
Technical Capability:	Outstanding	Very Good
Managerial Capability:	Outstanding	Very Good
Price:	\$1,346,581	\$1,908,750
Performance Risk:	Moderate	Low

The agency then held discussions with the offerors. During oral discussions, Dragon was informed of the negative response received by Fort Bragg, and was given the opportunity to address the perceived performance problems on that contract. In response, Dragon submitted a letter in which it generally disputed the negative statements and emphasized that its overall performance at Fort Bragg was considered satisfactory. Dragon conceded that the firm had received cure notices and CDRs, but asserted that the cure notices were resolved satisfactorily, and that the CDRs were the subject of a dispute.⁴

After receipt of this letter, the PRAG chairperson contacted a contract administration official at Fort Bragg, who had apparently been provided a copy of Dragon's letter. She confirmed that the agency had issued CDRs to which Dragon failed to respond, and had withheld payments to Dragon until CDR responses and corrections were made; she described getting corrective actions from Dragon as "pulling teeth."

¹The source selection decision document states that a moderate performance risk assessment reflects some doubt that the offeror can perform the required effort based on the offeror's performance record; a low performance risk assessment reflects little doubt that the offeror can successfully perform.

²Two of the five offerors withdrew their proposals prior to the request for best and final offers (BAFO), and the third offeror's proposal is not at issue here.

⁴According to Dragon, the contracting officials at Fort Bragg now acknowledge errors in the CDRs and have offered a settlement. Dragon also stated, without explanation, that all the CDRs erroneously utilized incorrect standards and faulty sampling techniques. Dragon finally stated that it had responded to the CDRs and had always provided responsive corrective action when in error.

The PRAG subsequently received a response from the COR on the Fort Bragg contract regarding Dragon's performance there. This response described Dragon's performance in neutral terms. Since this response differed from the response received from Fort Bragg's administrative contracting officer, the PRAG contacted the administrative contracting officer for an explanation. She stated that the COR was planning to ask the PRAG for permission to revise his responses, and explained that he was initially fearful of providing specific responses to the questions due to an ongoing investigation of Dragon at Fort Bragg. The PRAG subsequently received the revised response, which generally echoed the response of the administrative contracting officer: cure notices were issued, staffing levels were insufficient, and Dragon's quality assurance plan was a weakness.

In light of the revised responses, the contracting officer again contacted the contract administration official at Fort Bragg for verification. A memorandum for the record memorializing that conversation indicates that she identified Dragon's major problem areas as a failure to follow proper regulations and guidelines on the preparation of food, to meet sanitation requirements, to account for subsistence items, and as a lack of overall quality and timely service due to understaffing, insufficient management, and insufficient quality control procedures.

After calling for and evaluating BAFOs, the PRAG concluded that Dragon's proposal continued to present a moderate performance risk. The final evaluation results were:

	<u>Dragon</u>	<u>IMS</u>
Technical Capability:	Outstanding	Outstanding
Managerial Capability:	Very Good	Very Good
Price:	\$1,458,250	\$1,562,463
Performance Risk:	Moderate	Low

Based upon these results, the contracting officer determined that an award to IMS would represent the best value to the government. She noted that the proposals of both Dragon and IMS were substantially equal under the technical and managerial capability factors, and found that IMS' proposal, with its low performance risk assessment, was worth its slightly higher price, considering Dragon's moderate performance risk assessment. The contract was awarded to IMS on September 29, and this protest followed.

DISCUSSION

Improper Evaluation

Dragon challenges the agency's conclusion that its proposal reflected a moderate level of performance risk, arguing that the information received from Fort Bragg was erroneous, that the agency improperly gave too much weight to its negative performance at Fort Bragg and not enough weight to its positive performance at Fitzsimons, and that the agency improperly interpreted one of the responses from Fitzsimons.

In reviewing an evaluation of an offeror's performance risk, we will examine it to ensure that it was reasonable and consistent with the stated evaluation criteria, since the relative merit of competing proposals is primarily a matter of agency discretion. See CTA Inc., B-253654, Oct. 12, 1993, 93-2 CPD ¶ 218; Instrument Control Serv., Inc., B-247286, Apr. 30, 1992, 92-1 CPD ¶ 407. We find that the record here supports the Army's conclusion that Dragon's proposal presented a moderate performance risk, and that the contracting officer properly took this into account in her selection decision.

Dragon principally asserts that the Army improperly relied on erroneous information from Fort Bragg concerning Dragon's past performance. Dragon disputes various statements made by the officials at Fort Bragg,⁵ and contends that, with regard to that contract, the firm had a "visible" quality control program,⁶ negotiated changes in good faith, provided a proper allocation of personnel, responded to the agency's concerns before payments were withheld, and provided corrective action in a timely manner.

While Dragon offers general denials of the statements made by Fort Bragg contracting officials, as well as explanations and interpretations of the record that provide a more favorable picture of Dragon's activities than drawn by the Army, this does not alter the fact that there was sufficient

⁵While Dragon suggests that Fort Bragg's administrative contracting officer coerced the COR into revising his responses to correspond to hers, there is no evidence in the record to support this suggestion. Moreover, the protester has submitted contemporaneous inspection reports from Fort Bragg, signed by the COR, referring to the problems discussed in the COR's revised response.

⁶Dragon does not explain what it means by a "visible" quality control plan other than to say that contemporaneous inspection reports from Fort Bragg do not question the firm's quality control plan.

evidence for the Army to conclude that the firm had a series of performance problems under the Fort Bragg contract. An agency's evaluation of past performance may be based upon the procuring agency's reasonable perception of inadequate prior performance, even where the contractor disputes the agency's interpretation of the facts. See Pannesma Co. Ltd., B-251688, Apr. 19, 1993, 93-1 CPD ¶ 333; Firm Otto Einhaupl, B-241553 et al., Feb. 20, 1991, 91-1 CPD ¶ 192.

For example, Dragon concedes that "personnel issues did arise" during performance of the contract, and provides copies of contemporaneous inspection reports whose comments clearly indicate problems with inadequate staffing. These same inspection reports contain comments indicating that Dragon was slow in taking corrective action to solve various problems or discrepancies, and reflect concern about Dragon's unloading of subsistence items, floor care, and erroneous notations of freezer temperatures. Dragon does not dispute the information contained in these inspection reports. Further, Dragon concedes that Fort Bragg issued CDRs and cure notices, and withheld payments to the firm. While it states that these matters are the subject of a dispute, it provides no details concerning the nature of the dispute that would indicate that the information provided by Fort Bragg officials was erroneous. Particularly in light of the solicitation's caution that the burden of proving acceptability remained with the offerors, we find reasonable the agency's conclusion that Dragon had performance problems at Fort Bragg.⁷

Dragon also argues that the agency failed to account for Dragon's performance on both Fitzsimons contracts, and, consequently, placed too much weight on its negative performance at Fort Bragg, and too little weight on its positive performance at Fitzsimons. Our review of the record shows that the PRAG received only one questionnaire response from Fitzsimons, and the cover sheet of that response specifically refers to the most recent contract at that facility. While the PRAG made several attempts to obtain information concerning Dragon from the contracting officer on the earlier Fitzsimons contract, that individual failed to respond to the questionnaire.

⁷Dragon also argues that, in giving the firm a moderate performance risk rating, the Army improperly ignored its own evaluation of Dragon's technical and management proposals in areas such as quality control and staffing plans. However, such consideration would have been inconsistent with the solicitation's evaluation scheme, which specifically stated that, in its evaluation of performance risk, the agency would examine the offeror's record of past performance.

Even though the PRAG was unable to get a response from the contracting officer on the earlier Fitzsimons contract, there is no legal requirement that all references listed in a proposal be checked. Questech, Inc., B-236028, Nov. 1, 1989, 89-2 CPD ¶ 407. Further, since the respondent from Fitzsimons was also listed in Dragon's proposal as a point of contact for the earlier Fitzsimons contract, the agency reports that it deduced that award of the follow-on contract indicated that the hospital was satisfied with Dragon's previous performance. Thus, we do not think that Dragon suffered any prejudice from the agency's inability to obtain a questionnaire response concerning the earlier Fitzsimons contract, because even if such a response had been favorable--as both the protester and the agency assume--the agency contends that the negative information received from Fort Bragg was sufficient to justify Dragon's moderate performance risk assessment.

In light of the above-mentioned performance problems at Fort Bragg, and the solicitation's instruction that a significant problem could become an important consideration in the evaluation process, we have no basis to question the agency's decision to award Dragon a moderate performance risk rating, notwithstanding the favorable information received from Fitzsimons. See CTA Inc., supra; Instrument Control Servs., Inc., supra.

Dragon finally argues that the Army misinterpreted the response received from Fitzsimons concerning JCAHO compliance, and contends that the source selection document indicates that the Army improperly attributed risk to the firm as a result. Upon examination of the record, it is not clear whether the statement concerning JCAHO compliance describes a risk attributable to Dragon's performance of the contract, or to risks inherent in the performance of the effort. However, even if the source selection document's interpretation of this statement was in error, we do not believe that Dragon was prejudiced by this error. As discussed above, the contracting officer stated in the source selection document that Dragon's performance at Fitzsimons was good. In her statement submitted in response to this protest, the contracting officer asserts that Dragon's performance history at Fitzsimons alone would have resulted in a low risk rating, but that the performance history at Fort Bragg resulted in a moderate risk rating. Thus, the record does not support a conclusion that correcting an error or misunderstanding regarding Dragon's performance at Fitzsimons would have resulted in a better rating for performance risk.

Inadequate Discussions

Dragon contends that the Army failed to conduct adequate discussions concerning the performance risk factor. Dragon primarily asserts that it should have been provided an opportunity to rebut the statements that the PRAG received from Fort Bragg after discussions.

Where, as part of the technical evaluation of offers, offerors have been required to furnish references concerning past performance information and are aware that these references may be contacted, the contracting agency may consider the replies of the references without being required to seek the offeror's comments concerning the information. We view this information as essentially historical in nature, and the protester is generally unlikely to be able to make a significant contribution to its interpretation. See JCI Envtl. Servs., B-250752.3, Apr. 7, 1993, 93-1 CPD ¶ 299; Bendix Field Eng'g Corp., B-241156, Jan. 16, 1991, 91-1 CPD ¶ 44; Saturn Constr. Co., Inc., B-236209, Nov. 16, 1989, 89-2 CPD ¶ 467.

While it thus was not required to do so, the Army in fact specifically notified Dragon of the initial unfavorable statements made by Fort Bragg, and provided it an opportunity to explain the circumstances surrounding the events. Dragon was told that the information received from Fort Bragg indicated that the firm had received CDRs and cure notices, that the firm did not respond to CDRs, and that Dragon had performance problems that appeared to be the result of understaffing. In response, the protester submitted a letter disputing the information provided by Fort Bragg, and stating that the alleged deficiencies had been solved, without specifying details about the nature of the deficiencies or their resolution. Having received such a response, the contracting official reasonably sought additional information about the earlier contracts. Instrument Control Serv., Inc., supra.

Most of the additional comments received from Fort Bragg after discussions consisted of reiterations of information that had been discussed with the protester, such as allegations of inadequate staffing and slow responses to identified problems, and assertions that cure notices and CDRs were issued. As for the remaining issues, such as Fort Bragg's concerns about Dragon's performance problems in areas like patient nutrition care, food preparation, facility sanitation, and quality control program, Dragon provides merely a general denial of these allegations, with

no further explanation.² As a result, we are not persuaded that Dragon could have made any significant contribution to the agency's interpretation of the historical information regarding its past performance such that the agency was required to raise the issue with Dragon again after receiving the additional comments from Fort Bragg. See JCI Envtl. Servs., supra; Bendix Field Eng'g Corp., supra; Saturn Constr. Co., Inc., supra.

Finally, we note that Dragon was assessed a moderate performance risk rating prior to the PRAG's receipt of these particular allegations. We think this evidences the PRAG's opinion that the initial statements received from Fort Bragg--i.e., the ones that were discussed with the protester--were sufficient for it to assess Dragon a moderate performance risk rating. Under the circumstances, we fail to see how the protester was prejudiced by the agency's decision not to seek additional comment from it concerning information it received after discussions. See Saturn Constr. Co., Inc., supra.

Managerial Capability

Dragon argues that the Army improperly downgraded its management proposal from outstanding in the initial evaluation to very good in the final evaluation.

As stated above, the managerial capability factor was evaluated on an adjectival basis. The RFP stated that the evaluation of this factor would include the adequacy of the offeror's approach to meeting the requirements of the SOW's quality control plan, quality assurance/improvement plan, strike contingency plan, sanitation plan, and nutrition training plan. Each offeror's management proposal was evaluated several times on an individual basis by the three agency evaluators,⁹ who then arrived at consensus scores at various stages in the procurement process. Prior to discussions, five of the six individual ratings received by Dragon were outstanding, and the consensus rating arrived at in the pre-business clearance memorandum was outstanding. After submission of revisions and BAFOs, all three individual ratings received by Dragon were outstanding, and the consensus rating arrived at in the final evaluation was very good. A notation at the top of the final consensus evaluation sheet for Dragon states that while many areas of

⁸As stated above, Dragon itself provides contemporaneous inspection reports that support the agency's concerns.

⁹One of the three evaluators apparently fell ill during the conduct of this procurement and did not participate in the final two rounds of evaluations.

the evaluation were given an outstanding rating on each individual level, they were downgraded to a very good rating in the final consensus because there were no documented advantages supporting an outstanding rating.

While Dragon correctly contends that some of the individual evaluation sheets do document advantages in the firm's management proposal, there is nothing inherently objectionable in an agency's decision to develop a consensus rating. The fact that the evaluators individually rated Dragon's managerial capability more favorably does not by itself warrant questioning the final evaluation results. See General Research Corp., B-253866.2, Dec. 17, 1993, 93-2 CPD ¶ 325; Syscon Servs., Inc., 68 Comp. Gen. 698 (1989), 89-2 CPD ¶ 258. It is proper for technical evaluators to discuss the relative strengths and weaknesses of proposals in order to reach a consensus rating, which often differs from the ratings given by individual evaluators. Schweizer Aircraft Corp., B-248640.2; B-248640.3, Sept. 14, 1992, 92-2 CPD ¶ 200; General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. The overriding concern in the evaluation process is that the final score assigned accurately reflect the actual merits of the proposals, not that it be mechanically traceable back to the scores initially given by the individual evaluators. The Cadmus Group, Inc., B-241372.3, Sept. 25, 1991, 91-2 CPD ¶ 271.

Here, the record provides no basis to question whether the final evaluation results properly reflected the attributes of Dragon's management proposal. While Dragon correctly asserts that the individual evaluation sheets list advantages in Dragon's management proposal concerning three of the five subfactors¹⁰ evaluated under the managerial capability factor, there is no evidence that these advantages warranted assessing Dragon a rating of outstanding, as opposed to a rating of very good. In some cases, the listed advantages merely echo the RFP's requirements. For example, while one of the evaluators noted Dragon's training program for key personnel under the nutrition plan for food preparation and serving procedures as an advantage, the SCW required the contractor to provide sufficient training to all employees engaged in food preparation and serving.

While another advantage of Dragon's management proposal was said to be that its strike contingency plan identified specific qualified personnel trained and ready to provide

¹⁰Another advantage cited by Dragon concerns the quality assurance/improvement plan subfactor, which was rated outstanding in the final consensus; the remaining subfactors were rated very good.

services in the event of a strike, the SOW required contractors' strike contingency plans to include proposed procedures to perform services in the contract and use supervisory and other personnel in case of a strike. As Dragon does not explain why these documented advantages support an outstanding rating, but simply disagrees with the consensus rating reached by the agency's evaluators, we have no basis upon which to find that the agency's evaluation was unreasonable. See ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.¹¹

Best Value Analysis

Dragon finally argues that the agency improperly performed its best value analysis and made award to IMS despite its higher cost. The protester contends that the agency weighed the performance risk factor too heavily in relation to price.

We find that the agency did not place undue emphasis on the risk assessment in making the award decision. In a negotiated procurement, price/past performance tradeoffs are permitted provided they are rational and consistent with the stated evaluation criteria. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325; Corvac, Inc., B-254757, Jan. 11, 1994, 94-1 CPD ¶ 14. Here, although the proposals of both IMS and Dragon were essentially equal under both the technical and managerial capability factors, the contracting officer determined that IMS' better record of past performance outweighed its slightly higher price and therefore presented the best value to the government. We see nothing unreasonable about the determination, and it is consistent with the evaluation criteria, which specifically provided for this type of tradeoff. See Corvac, Inc., supra; JCI Envtl. Servs., supra.

The protest is denied.

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¹¹The evaluators also downgraded areas of IMS' management proposal that were individually rated outstanding to very good ratings in the final consensus, because there were no documented advantages supporting an outstanding rating. As with Dragon's management proposal, the individual evaluation sheets also listed a number of advantages found in IMS' management proposal with respect to various subfactors.